

DOCUMENT RESUME

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[Travel Expenses in Connection with Separation and Reinstatement]. B-187989. August 18, 1977. 4 pp.

Decision re: N. Victor Bonilla-Sosa; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of State.

Authority: Foreign Service Act of 1946, as amended (22 U.S.C. 1136; 22 U.S.C. 1118). Back Pay Act (5 U.S.C. 5596).

B-161263 (1967). B-180469 (1974).

Daniel L. Williamson, Deputy Assistant Secretary for Budget and Finance, Department of State, requested an advance decision with regard to the implementation of certain provisions of a settlement stipulation between the Department and an employee incident to the employee's reinstatement. An employee of the State Department who was erroneously separated and returned to his home of record may, upon reinstatement and having returned to his duty station, be transferred from there to a new post of duty. Travel expenses in connection with an appeal of the proposed separation may be reimbursed. (Author/SC)

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Comptroller General
of the United States

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187989

DATE: August 18, 1977

MATTER OF: N. Victor Bonilla-Sosa - Travel expenses
in connection with separation and reinstatement

- DIGEST:**
1. Employee of State Department erroneously separated and returned to home of record may, upon reinstatement, having returned to duty station, be transferred from there to new post of duty. Back Pay Act, 5 U.S.C. § 5596, does not authorize travel expenses; however, travel entitlements here may be granted employee under Foreign Service Act, 5 U.S.C. §§ 1136 and 1148.
 2. Employee of State Department who traveled to Washington to appeal proposed separation may be reimbursed travel expenses in connection therewith. B-180409, February 28, 1974.

By a letter dated October 19, 1976, Mr. Daniel L. Williamson, Deputy Assistant Secretary for Budget and Finance, Department of State, requested an advance decision regarding the propriety of implementing certain provisions of a Settlement Stipulation entered into by the Department and Mr. N. Victor Bonilla-Sosa incident to Mr. Bonilla-Sosa's reinstatement. The provisions in question deal with storage and shipment of household goods, travel expenses incident to appeal of his separation, travel incident to the separation and home leave travel at the time of reinstatement.

The record shows that in August 1975 Mr. Bonilla-Sosa's appointment as a Foreign Service Reserve Officer was terminated. At the time Mr. Bonilla-Sosa was stationed in Montreal, Canada. Previously in February 1975 he had traveled to Washington, D.C., to appeal the proposed separation. On August 9, 1976, the Department entered into a stipulated settlement with Mr. Bonilla-Sosa as a result of a grievance filed under Public Law 94-141 and a lawsuit alleging an unwarranted and unjustified separation due to national origin discrimination. Mr. Bonilla-Sosa was reinstated on October 1, 1976, and transferred from Montreal to Washington.

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Regarding Mr. Bonilla-Sosa's reinstatement and implementation of the stipulated agreement Mr. Williamson asks the following questions:

"Under the provisions of Section 911 (1) and (3) of the Foreign Service Act of 1946, as amended, the Department issued travel authorization 6-60333, dated July 1, 1975, providing for Mr. Bonilla-Sosa's travel and shipment of his household effects from Montreal, Canada to Berkeley, California. He was also authorized 5 days' consultation in the Department. Mr. Bonilla-Sosa traveled to Berkeley on these orders but his effects were stored in Montreal.

"In effecting Mr. Bonilla-Sosa's reinstatement the Department seeks your advice as to its authority under Section 911 (1) of the aforementioned Act, in the context of his reinstatement under 5 U.S.C. 5596, to issue home leave transfer orders which would permit, in addition to the separation travel, travel from Montreal/Berkeley, California/Washington and the shipment of household effects from Montreal to Washington. If we have the authority to issue the home leave transfer orders, do we have the authority to voucher and schedule for payment the expenses incurred as a result of the separation travel as well as the expenses to be incurred under the home leave transfer orders? * * *

"The final question remaining to be resolved is that covered in item No. VIII of the stipulation. Mr. Bonilla-Sosa traveled from Montreal to Washington, D.C. during February 1975 to review the reasons for, and to appeal for reconsideration of his proposed separation. The Department was aware of Mr. Bonilla-Sosa's travel and made the necessary arrangements for appointments to discuss this matter; however, orders were not issued for travel at

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Government expense. May we, at this date, authorize the travel and schedule a voucher for payment?"

We shall first consider the Department's authority to issue home leave transfer orders for travel from Montreal, Canada, to Berkeley, California, to Washington, D.C. The Back Pay Act, 5 U.S.C. § 5596 (1970), provides that upon correction of an erroneous personnel action, an employee is entitled to receive all or any part of the pay and allowances, or differentials, as applicable, which normally he would have earned during such period if the personnel action had not occurred. The reimbursement for travel or transportation expenses is not regarded as part of compensation, pay or allowances. B-161263, May 2, 1967. Thus, Mr. Bonilla-Sosa's entitlement to travel expenses under home leave transfer orders rests upon the provisions of sections 911 and 933 of the Foreign Service Act of 1946, as amended, 22 U.S.C. §§ 1136 and 1148 (1970).

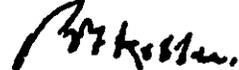
At the time of his separation the employee was issued separation orders for return to the United States. He was also entitled under those orders to ship his household goods to the United States. However, the shipment was not made. Since the record shows the employee had completed an extended tour abroad, these expenses were properly authorized.

At the time of his reinstatement, the employee, having returned to Montreal, was transferred from Montreal to Washington, D.C., with home leave and 5 days consultation. Although the Back Pay Act does not apply to said travel and transportation benefits, it does not preclude statutory travel and transportation entitlements granted to overseas employees under other statutes. Thus, but for his separation, the employee in the instant case would have been entitled to home leave under 22 U.S.C. §§ 1136 and 1148 during his tour of duty as well as return transportation and home leave at the end of his tour. The employee's travel to California under the separation was proper and does not affect any subsequent travel orders. Therefore, travel and transportation, which in this case could not be authorized under the Back Pay Act, may be authorized under the aforementioned provisions of the Foreign Service Act. Accordingly, we believe the home leave transfer orders were properly authorized.

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With regard to the question concerning the employee's travel from Montreal to Washington at Government expense to appeal his proposed separation, we held in B-180469, February 28, 1974, that an appeal to the Civil Service Commission of an adverse agency action is clearly a matter imbued with the Government's interest. In addition, we found that travel to a distant city placed an unreasonable burden on the employee unless the cost was borne by the agency. We conclude that the agency has determined that such travel was in the interest of the Government. Accordingly, we would have no objection to implementation of Part VIII of the Settlement Stipulation.

The matter is returned for processing in accordance with the above.


Deputy Comptroller General
of the United States